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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,797	09/10/2003	Scott Bysick	29953-184845	1814

26694 7590 07/14/2006

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EXAMINER

WEAVER, SUE A

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/658,797

Applicant(s)

BYSICK ET AL.

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Examiner

Sue A. Weaver

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-13,15-20 and 22-26 is/are rejected.
- 7) ☒ Claim(s) 2,14 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The drawings were received on 4/26/06. These drawings are accepted.
2. The indicated allowability of claims 20 and 22-26 is withdrawn in view of the newly discovered reference(s) to Morizumi, JP '239. Rejections based on the newly cited reference(s) follow.
3. The declaration filed on 4/26/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the Pedmo et al (US 6,932,230) reference.

The evidence submitted is insufficient to establish a conception and reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Pedmo et al reference. While the declaration alleges that the acts took place prior to 8/15/03, it does not indicate where the acts took place in accordance with 35 USC 104 and in accordance with section 715.07 (c) of the MPEP.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 and 7-9 remain rejected under 35 U.S.C. 102(e) as being anticipated by Pedmo et al '230.

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Note the raised portion of the vacuum panel with upper and lower portions 28 and 30 separated by a recessed middle portion 32 as claimed.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4-6, 13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pedmo et al in the manner set forth with regard to claims 1 and 3 above.

The middle portion appears to have a depth less than  $\frac{1}{2}$  the depth of the upper and lower portion. In any even the particular depth appears to be an obvious matter of choice dependent in part in the wall thickness of the container. It is noted that applicant has not provided any showing of any criticality for the particular depths claimed.

6. Claims 10-12 and 19 remain rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claims 1 and 13 above, and further in view of JP '618.

To have further provided the vacuum panel with a pair of vertical ribs in the manner taught by JP '618 at 13 to strengthen the panel would have been most obvious.

7. Claims 1, 3-6, 8, 9, 13, 15, 16, 18, 20, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by or obvious under 35 USC 103 over Morizumi, JP 239.

Morizumi teaches a blow molded container with a plurality of recessed parts or panels 12 for absorption of pressure reduction or vacuum panels. Note that the panels include 3 raised parts 12a, 2b and 12c which are considered to define an island with a

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middle portion 12b which is lower and thus having a smaller horizontal cross section than the upper 12a and lower portions 12c. Since the container is blow molded it is considered to be plastic as claimed. Note that members 12d defines a boarder. Being convex member 12b is considered to define a rib. The depth is considered to be about  $\frac{1}{2}$  of the upper and lower portions. In any event the depth is considered to be a matter of choice dependent in part on the thickness of the portions.

8. Claims 7, 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claims 1, 13 and 20 above, and further in view of Lichtman et al '877.

To have bisected the upper and lower portions with the middle portion would have been obvious in view of the design shown by Lichtman et al.

9. Claims 1, 3-9, 13, 15-18, 20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lichtman et al '877 or Eberle et al '519, in view of Tobias '808, both of record.

To have made the bottles of either Lichtman et al or Eberle et al of blow molded plastic for light weight and hot fill use would have been obvious in view of such teaching by Tobias.

10. Claims 10-12, 19, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 13 and 20 above, and further in view of JP '618, of record.

To have further provided the panels with indented vertical ribs to improve pressure reduction would have been obvious in view of JP '618 at 13.

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11. Claims 2, 14 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Applicant's arguments with respect to claims 1, 3-13 and 15-19, 20 and 22-26 have been considered but are moot in view of the new ground(s) of rejection.

13.

14. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

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Signature: \_\_\_\_\_


Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday from 6 to 4:30.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SUE A. WEAVER  
PRIMARY EXAMINER  
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